

# REPORT OF THE SECRETARY OF THE NAVY,

IN COMPLIANCE WITH

*A resolution of the Senate of the 4th instant, calling for copies of the instructions given to Commodore McCauley, while recently and temporarily in command of the Home Squadron.*

MARCH 10, 1856.—Read and referred to the Committee on Naval Affairs.

JUNE 15, 1858.—Ordered to be printed.

NAVY DEPARTMENT,  
March 10, 1856.

SIR: In compliance with that portion of the resolution of the Senate of March 4, 1856, in which the Secretary of the Navy is requested "to communicate to the Senate copies of all the instructions given by the department to Commodore Charles S. McCauley, on the occasion of proceeding to the West Indies and the Havana, in the 'steamer San Jacinto,' while recently and temporarily commanding the 'Home squadron,' together with the instructions issued to Commodore Thomas Crabbe, commanding the United States naval forces on the coast of Africa, at the time the ship 'Jamestown' was ordered to the West Indies, about the period referred to," I have the honor to transmit herewith copies of the instructions designated.

In reply to that portion of the resolution which requests the Secretary of the Navy "to communicate to the Senate estimates of the amount of pay of the grades of captains, commanders, lieutenants, masters, passed midshipmen, and midshipmen, respectively, of the navy, prior and subsequent to the alleged execution of the 'act to promote the efficiency of the navy,' February 28, 1855, and whether the aggregate of pay and the number of the grades of officers herein specified are the same as allowed by law prior to the said act of 28th February, 1855," I herewith transmit a table, marked A, which furnishes estimates of the pay, respectively, of the grades above mentioned, prior and subsequent to the execution of the act of February 28, 1855, by which it will be seen that the "aggregate pay of said grades" is not increased, but diminished. In order to make a strictly

correct comparison, I directed an estimate to be made of the pay of those grades on the day of the passage of the act of 28th February, 1855; and another estimate on the 6th of March, 1856, the day the resolution of inquiry reached the department.

The "aggregate number of officers" is also not increased. "Prior" to the execution of the act referred to, the aggregate number of officers of those grades was eight hundred and eighty-five. The aggregate number "subsequent" thereto, on the 6th of March, 1856, embracing those on both the active and reserved lists, was eight hundred and seventeen.

I am, very respectfully, your obedient servant,

J. C. DOBBIN.

Hon. J. D. BRIGHT,

*President of the United States Senate.*

A.

*Estimates of the amount of pay of the grades of captains, commanders, lieutenants, masters, passed midshipmen, and midshipmen, respectively, of the navy, prior and subsequent to the execution of the "act to promote the efficiency of the navy," approved February 28, 1855.*

Estimate of pay prior to the act—

Captains.....	\$201,000
Commanders.....	199,500
Lieutenants.....	466,300
Masters.....	29,125
Passed Midshipmen.....	149,850
Midshipmen.....	65,000
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	1,110,775
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Estimate of pay subsequent to the act—

Captains.....	\$242,500
Commanders.....	222,600
Lieutenants.....	470,550
Masters.....	30,375
Passed Midshipmen.....	600
Midshipmen.....	58,150
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	1,024,775
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UNITED STATES NAVY DEPARTMENT,  
*Washington, April 10, 1855.*

SIR: The department has determined to assign to you special duty, and place you, temporarily, in command of the home squadron.

Reposing confidence in your prudence, experience, and patriotism, I have selected you for the discharge of certain duties always delicate and responsible, the proper execution of which may involve questions of national honor and peace.

Recent events in Cuba and on the high seas in the vicinity of that island are of a character calculated not merely to attract attention and excite the solicitude of this government, but to call for constant vigilance on your part, in order that the rights of our countrymen and the interest of our commerce may be neither wantonly assailed nor carelessly disregarded. It is hardly necessary that I should undertake to recite with particularity all the circumstances which are worthy of your consideration; but I deem it proper to call your attention to the conduct of the commander of the Spanish frigate *Ferrolona*, in firing at the United States mail steamer "*El Dorado*," and subjecting that vessel to delay, visitation and search, about eight miles from cape San Antonio, an occurrence which, if approved by the Spanish authorities, is likely to disturb the friendly relations between the two governments, and a course of proceeding which, if persisted in, cannot but provoke collision.

I need not remind you, commodore, that the right of visitation or search of our vessels on the high seas is one the existence of which the United States have steadily refused to recognize, and the exercise of which they will, with equal firmness, ever refuse to tolerate.

The President instructs me to say to you, that if any officer in command of a ship-of-war be present when an outrage of the character heretofore mentioned is perpetrated on a vessel rightfully bearing our flag, he will promptly interpose, relieve the arrested American ship, prevent the exercise of the assumed right of visitation or search, and repel the interference by force. The President is not unmindful of the present disturbed condition of Cuba. But, whatever weight may be attached to these considerations, the excited apprehensions of the authorities of that island, arising, it is believed, out of the condition of its internal affairs, and not from any movement in this country in violation of our neutrality laws, can work no suspension of national law, nor reconcile a submission to the violation of any right resulting from the law of nations or treaty stipulations. The United States seek no collision with Spain. The officers of our navy are desired and expected scrupulously to observe the law of nations, and uniformly to extend all courtesy and respect to the flags of other powers. But these rules do not require consent for a moment to the deliberate violation of principles held sacred by the United States, and without the observance of which peace, however desirable, cannot be maintained.

The conduct of the authorities of Cuba in overhauling and searching our vessels cannot rest on the ground of territorial jurisdiction; and this government denies the existence of any state of facts to warrant the exercise of belligerent rights. Your instructions are confined to cases arising on the high seas, because, as at present advised, the offensive acts which have been committed are of that character. Other offensive acts, however, undoubtedly might occur within the proper territorial jurisdiction of Cuba to which this government could

## INSTRUCTIONS TO COMMODORE M'CAULEY.

not and would not submit for a moment. Should such a case arise, you will immediately report the facts to this department, and await further instructions, unless your prompt interposition should become necessary for the preservation of the lives and property of citizens of the United States.

Accompanying this despatch you will receive a copy of the recent letter of Mr. Marcy, Secretary of State, to Mr. Cueto, the Spanish minister at Washington, to which your attention is especially invited as setting forth with distinctness and force the views entertained by the President on this subject.

The vessels constituting the home squadron, under your command, for the present, are the *San Jacinto*, Captain Stribling; the *James-town*, Captain Crabbe; the *Falmouth*, Commander Shaw; the *Princeton*, Commander Eagle; and the *Fulton*, Lieutenant Commanding Mitchell; to which other vessels will be added at the earliest practicable moment.

The *Jamestown*, Captain Crabbe, having been originally assigned as the flag-ship of the African squadron, is designed, only temporarily, to form a part of the home squadron, and is probably now on her way to Key West, at which point, after touching at Havana, she will await your instructions. I enclose you a copy of my instructions to Captain Crabbe.

The department desires you to proceed immediately to Philadelphia, where the steam frigate *San Jacinto* is now lying, and designed as the flag-ship of the home squadron, and after hoisting your broad pendant on board of that vessel, you will direct your course first to Havana, at which place you will seek an interview with our acting consul, procure from him all information bearing upon the duties of the home squadron, and then regulate your cruising and the movements of the ships under your command with a view to the protection of the rights and interests of your country.

I deem it unnecessary, commodore, to multiply suggestions to one of your long experience and excellent judgment, or to enlarge upon the importance of doing everything in your power to preserve discipline and to promote a cheerful and contented spirit among the officers and men under your command.

You will avail yourself of every opportunity to keep the department advised of your movements and the condition of affairs within the limits of your station.

Wishing you an agreeable and successful cruise, I am very respectfully, your obedient servant,

J. C. DOBBIN,  
*Secretary of the Navy.*

Commodore CHARLES S. McCAULEY,  
*Appointed to command Home Squadron, Washington, D. C.*

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DEPARTMENT OF STATE,  
*Washington, March 28, 1855.*

The undersigned, Secretary of State, is directed by the President of the United States to express to Mr. Cueto, her Catholic Majesty's



minister, his deep regret that nearly at the same time the government of the United States received assurances from Spain of a disposition on her part to adjust in a satisfactory manner the difficulty occasioned by the seizure and detention of the Black Warrior, information should have reached this department in regard to an occurrence of a character likely to disturb the friendly relations of the two countries. In an interview between the undersigned and Mr. Cueto, a few days ago, the conduct of the commander of the Spanish frigate Ferrolona, in firing at the United States mail steamer El Dorado, and subjecting that vessel to visitation and search, was brought to the notice of her Catholic Majesty's minister.

The act of the commander of the Ferrolona, as presented to this government, if done by the order of Spain, or sanctioned by her, must be regarded as the assertion of a right to exercise a police over our commerce upon the ocean which will be resisted at every hazard by the government of the United States.

There is no question in regard to our international relations which has within a recent period been more fully discussed than that respecting the limits to the right of visitation and search. This is a belligerent right, and no nation which is not engaged in hostilities can have any pretense to exercise it upon the open sea. The established doctrine upon this subject is, "that the right of visitation and search of vessels, armed or unarmed, navigating the high seas in time of peace, does not belong to the public ships of any nation. This right is strictly a belligerent right, allowed by the general consent of nations in time of war, and limited to those occasions."

The undersigned avails himself of the authority and language of a distinguished writer on international law:

"We again repeat, that it is impossible to show a single passage of any institutional writer on public law, or the judgment of any court by which that law is administered, either in Europe or America, which will justify the exercise of such a right on the high seas in time of peace independent of special compact. The right of seizure for a breach of the revenue laws or laws of trade and navigation of a particular country, is quite different. The utmost length to which the exercise of this right on the high seas has ever been carried, in respect to the vessels of another nation, has been to justify seizing them within the territorial jurisdiction of the State against whose laws they offend, *and* pursuing them, in case of flight beyond that limit, arresting them on the ocean, and bringing them in for adjudication before the tribunals of that State. 'This, however,' suggests the Supreme Court of the United States, in the case before quoted of the *Marianna Flora*, 'has never been supposed to draw after it any right of visitation or search. The party, in such case, seizes at his peril. If he establishes the forfeiture, he is justified.'"

This is not peculiarly an American doctrine; it has the sanction of the soundest expositors of international law. Upon the ocean, in time of peace, that is, among nations not in war, all are entirely equal.

After several powers had declared the slave trade to be piracy by legislative enactments or treaty stipulations, an attempt was made by

Great Britain to extend the right of visitation, as contradistinguished from search, to vessels bearing the flag of the nations which had passed such laws, or entered into such treaties; but this endeavor was vigorously resisted, and may now be regarded as having been abandoned. It is certain that the United States have solemnly protested against such an extension of the right of search, and stands pledged before the world to meet it with uncompromising resistance.

The government of Great Britain, which favored the application of the right of visit to ships found on the coasts of Africa, under circumstances exciting vehement suspicions of being engaged in the slave trade, never thought of carrying the right so far as would justify the proceedings in the case of the *El Dorado*.

In 1839, the Haytien government passed a law declaring the slave trade piracy, and therein provided that any vessel, whether Haytien or foreign, found in the act of slave trading, should be seized and brought in for adjudication and condemnation. In a communication of Lord Palmerston, while principal secretary of foreign relations to her Britannic majesty to the Haytien government, in regard to that law, he uses the following language: "Her majesty's government wish to draw the attention of the Haytien government to a matter of form in this law, which may possibly give rise to embarrassments. The law enacts that all vessels, whether Haytien or foreign, which may be found in the act of slave trading, shall be seized and brought into a Haytien port. Now Hayti has, undoubtedly, a full right to make such an enactment about her own citizens and ships, but her Majesty's government apprehend that Hayti has no right so to legislate for the ships and the subjects or citizens of other States; *that in time of peace no ships belonging to one State have a right to search and detain ships sailing under the flag of and belonging to another State, without the permission of that State, which permission is generally signified by treaty*; and if Haytien cruisers were to stop, search, and detain merchant vessels sailing under the flag of and belonging to another country, even though such vessels were engaged in slave trade, the State to which such vessels belonged would have just grounds for demanding satisfaction and reparation from Hayti, unless such State had previously given to Hayti, by treaty, the right of search and detention."

Lord Aberdeen, while occupying the same position, admitted in a note to the American minister at London, "that to visit and search American vessels in time of peace when that right of search is not granted by treaty, would be an infraction of public law and a violation of national dignity and independence."

The most distinguished judge that ever presided over the British high court of admiralty has expressed himself clearly and emphatically on the subject of the right of visit and search, and declared "that no authority can be found which gives any right of *visitation* or *interruption* over the vessels or navigation of other States on the high seas, except what the right of war gives to belligerents against neutrals."

The undersigned does not anticipate that Spain will controvert the doctrine here laid down, and it is therefore difficult to perceive how

any attempt can be made to justify the conduct of her cruiser for the attack made upon the steamer *El Dorado*. The circumstances disclosed do not appear to afford any palliation for this open violation of international law. The *El Dorado* is one of a line of steamers carrying the United States mail between Aspinwall and New Orleans, and was, when brought to by force and subjected to search by the *Ferrolona* upon the high seas, on her regular trip and in her usual track with her signal lights brightly burning.

The case appears to the President to demand of the Spanish government serious consideration and prompt action. The authorized violation of a principle which this government cannot regard as open for discussion must lead to collision. The practical assertion of a pretended right which would justify or excuse such an attack as that made upon the *El Dorado* will be repelled by force, and Spain cannot fail to perceive the inevitable results of such a course, and will not, it is hoped, rashly provoke them.

In view of consequences so grave, the President would exceedingly regret the delay which must attend the reference of this matter to the home government for the terms of adjustment.

It is presumed that Spanish armed vessels on the high seas in the neighborhood of Cuba do not act independently of instructions from the authorities of that island, and the President trusts that the captain general possesses, not only competent authority, but that he will be actuated by a disposition to afford proper and prompt redress in the case here presented.

The undersigned avails himself of this occasion to offer to Mr. Cueto a renewed assurance of his high consideration.

W. L. MARCY.

Chevalier L. A. DE CUETO, &c.; &c.

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NAVY DEPARTMENT,  
*April 3, 1855.*

SIR: Events have recently occurred which constrain me most reluctantly to change for the present (and merely temporarily I trust) the destination of the *Jamestown*. The yellow fever has unfortunately deprived the government of the services of the frigate *Columbia*, which very materially weakens the strength of the home squadron. So great is the difficulty of procuring enlistments that we have no prospect whatever of very soon supplying her place.

The course pursued of late by the Spanish authorities at Cuba is of a character, if persisted in, unquestionably very likely to disturb the friendly relations of the two countries.

I need not recite to you all the irritating incidents occasioned by those authorities which have attracted the attention of the government, but call your attention chiefly to the recent firing into the mail steamer "*El Dorado*," and subjecting that vessel to delay, visitation, and search. This act is regarded as an exercise of power which the United States have ever firmly refused to recognize, and to which they will never submit. In the absence of a declaration of war,

which alone belongs to Congress, our officers in command of ships-of-war would have no right to pursue and retaliate for such an act. But, if present when the offence is perpetrated upon a vessel rightfully bearing the flag of our country, the officer would be regarded as derelict in his duty if he did not promptly interpose, relieve the arrested American ships, prevent the exercise of this assumed right of visitation or search, and repel the interference by force.

I have considered it proper merely to throw out these suggestions. The United States seek no collision with Spain. Her officers in command of ships-of-war are desired scrupulously to observe the law of nations, and to extend all courtesy and respect to the flags of other powers. But these rules do not require submission for a moment to the deliberate violation of principles held as sacred by our statesmen and our people, and without the observance of which, peace, however desirable, cannot be maintained.

I enclose you a copy of Mr. Marcy's letter to Mr. Cueto,\* the Spanish minister; that lays down, very clearly, the principles which will guide the officers of the navy. You will, however, receive special instructions in due time from Commodore McCauley, who will proceed in the San Jacinto to Cuba and its vicinity, on special duty for a short time, and being the senior officer, will, for that period be in command of the home squadron, of which the Jamestown will constitute a part, probably for only a few weeks.

You will now proceed immediately on receipt of this despatch to Key West, touching at Havana, not delaying there however longer than to call on the consul, and inform him, confidentially, of your destination, listening, however, to suggestions he may have to make. At Key West you will await instructions from Commodore McCauley.

I trust, captain, that this little interference with your regular duties in charge of the squadron of the coast of Africa may be brief, very brief, and that you may soon be on your way from the West Indies to your station. The emergency will be appreciated, and I mistake you much, if you are not ready cordially to go where the interests and honor of your country invite you.

I am, respectfully, your obedient servant,

J. C. DOBBIN.

Captain THOMAS CRABBE,

*Appointed to command African Squadron, Norfolk, Va.*

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\* See instructions to Commodore McCauley.